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Pre-Fabricated Steel Consultants, Inc. and Ironmen Construction, Inc., a Single Employer and Robin Scott and Ironworkers Local No. 10.
Cases 17-CA-18489 and 17-CA-18655

December 23, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge and amended charge filed by Robin Scott, an individual, on March 6 and May 31, 1996, and a charge and amended charge filed by the Union on May 30 and July 25, 1996, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on July 31, 1996, against Pre-Fabricated Steel Consultants, Inc. and Ironmen Construction, Inc., a single employer, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges, amended charges and complaint,¹ the Respondent failed to file an answer.

On November 19, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On November 21, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.²

¹ Although the General Counsel's motion indicates the consolidated complaint was served by certified mail but was returned to the Regional Office unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Therefore, we find that the Respondent was properly served the consolidated complaint.

² No further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, but this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Pre-Fabricated Steel Consultants, Inc. (PSC), a Missouri corporation with an office and place of business in Blue Springs, Missouri, has been engaged as a construction contractor. At all material times, Ironmen Construction, Inc. (Ironmen), a Missouri corporation with an office and place of business in Blue Springs, Missouri, has been engaged in the erection of metal buildings as a construction contractor. At all material times, PSC and Ironmen have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises, facilities, and tools and equipment; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. PSC and Ironmen constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending May 2, 1996, the Respondent, in conducting its business operations, purchased and received at its facility and jobsites within the State of Missouri goods and services valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About late January and the week ending February 18, and on February 6, 1996, the Respondent interrogated employees about their support for or activities on behalf of the Union.

About February 21, 1996, the Respondent threatened employees with loss of employment if they joined or supported the Union.

About February 7, 1996, the Respondent informed employees that they were losing benefits or privileges because of their activities on behalf of or sympathies toward the Union or their relationships to other employees who supported the Union.

About February 7, 1996, the Respondent withdrew from employee Robin Scott the employee benefit of using the Respondent's truck to drive to and from work. About February 18, 1996, the Respondent discharged employee Robin Scott. Around March or April

1996, the Respondent laid off employees Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. and subcontracted to a third party the work of these employees. The Respondent engaged in this conduct because the employees named above joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By withdrawing benefits, discharging or laying off the employees named above, and subcontracting the work of the laid-off employees, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has also thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by withdrawing from employee Robin Scott the benefit of using the Respondent's truck to drive to and from work, we shall order the Respondent to restore that benefit and to make Scott whole, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), for the loss of that benefit since February 7, 1996.

Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Robin Scott and laying off Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. and subcontracting to a third party the work of these laid-off employees, we shall order the Respondent to offer the discriminatee immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and

all references to the unlawful discharge or layoffs, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Pre-Fabricated Steel Consultants, Inc. and Ironmen Construction, Inc., a single employer, Blue Springs, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their support for or activities on behalf of Ironworkers Local No. 10.

(b) Threatening employees with loss of employment if they join or support the Union.

(c) Informing employees that they are losing benefits or privileges because of their activities on behalf of or sympathies toward the Union or their relationships to other employees who support the Union.

(d) Withdrawing benefits, discharging or laying off employees, and subcontracting their work to a third party because the employees join or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore to Robin Scott the benefit of using the Respondent's truck to drive to and from work.

(b) Make Robin Scott whole, with interest, for the loss of the use of the Respondent's truck to drive to and from work since February 7, 1996, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, offer Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharge or layoffs of Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr., and, within 3 days thereafter, notify the discriminatees in writing that this has been done.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination

and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Blue Springs, Missouri, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 6, 1996.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 23, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their support for or activities on behalf of Ironworkers Local No. 10.

WE WILL NOT threaten employees with loss of employment if they join or support the Union.

WE WILL NOT inform employees that they are losing benefits or privileges because of their activities on behalf of or sympathies toward the Union or their relationships to other employees who support the Union.

WE WILL NOT withdraw benefits, discharge or lay off employees, and subcontract their work to a third party because the employees join or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore to Robin Scott the benefit of using our truck to drive to and from work.

WE WILL make Robin Scott whole, with interest for the loss of the use of our truck to drive to and from work since February 7, 1996.

WE WILL, within 14 days from the date of the Board's Order, offer Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr. whole for any loss of earnings and other benefits suffered as a result of our discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge or layoffs of Robin Scott, Cliff Sharp, Rob Francis, Paul Allison, Scottie Smith, and Joe Humphrey Sr., and, within 3 days thereafter, notify them in writing that this has been done.

PRE-FABRICATED STEEL CONSULTANTS,
INC. AND IRONMEN CONSTRUCTION,
INC., A SINGLE EMPLOYER

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their support for or activities on behalf of IRON-WORKERS LOCAL NO. 10.

WE WILL NOT threaten employees with loss of employment if they join or support the Union.

WE WILL NOT inform employees that they are losing benefits or privileges because of their activities on behalf of or sympathies toward the Union or their relationships to other employees who support the Union.

WE WILL NOT withdraw benefits, discharge or lay off employees, and subcontract their work to a third party because the employees join or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore to ROBIN SCOTT the benefit of using our truck to drive to and from work.

WE WILL make ROBIN SCOTT whole, with interest for the loss of the use of our truck to drive to and from work since February 7, 1996.

WE WILL, within 14 days from the date of the Board's Order, offer ROBIN SCOTT, CLIFF SHARP, ROB FRANCIS, PAUL ALLISON, SCOTTIE SMITH, and JOE HUMPHREY SR. full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make ROBIN SCOTT, CLIFF SHARP, ROB FRANCIS, PAUL ALLISON, SCOTTIE SMITH, and JOE HUMPHREY SR. whole for any loss of earnings and other benefits suffered as a result of our discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge or layoffs of ROBIN SCOTT, CLIFF SHARP, ROB FRANCIS, PAUL ALLISON, SCOTTIE SMITH, and JOE HUMPHREY SR., and, within 3 days thereafter, notify them in writing that this has been done.

PRE-FABRICATED STEEL CONSULTANTS, INC.
AND IRONMEN CONSTRUCTION, INC., A
SINGLE EMPLOYER

(Employer)

Dated _____ By _____
(Representative) (Title)

8600 Farley Street, Suite 100, Overland Park, Kansas 66212-4677, Telephone 913-236-3005.